



**U.S. Department of Justice**

*United States Attorney for the  
Southern District of New York*

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*86 Chambers Street, Third Floor  
New York, New York 10007*

November 22, 2022

**VIA ECF**

Hon. Katherine Polk Failla  
United States District Court  
United States District Courthouse  
40 Foley Square  
New York, New York 10007

**MEMO ENDORSED**

Re: *Zheng v. USCIS*, No. 22 Civ. 6555 (KPF)

Dear Judge Failla:

This Office represents the government in this action in which the plaintiff, who claims to be proceeding *pro se*, seeks an order compelling U.S. Citizenship and Immigration Services to adjudicate an Application for Asylum and for Withholding of Removal (Form I-589). I write respectfully to request that the Court (i) issue an order to show cause why this matter should not be dismissed for failure to prosecute or follow a Court order and (ii) extend the government's deadline to respond to the complaint by sixty days (*i.e.*, from December 15, 2022, to February 13, 2023) and adjourn the initial pretrial conference currently scheduled for December 20 to a date thereafter, to the extent the matter has not been dismissed for failure to prosecute.

On September 30, 2022, at the government's request, the Court ordered the plaintiff to clarify by November 15, 2022, whether he is represented by counsel, given that the complaint listed an email address associated with the law office of attorney, Mouren/Morris Wu, and that the plaintiff attached as an exhibit to the complaint a filing receipt notice issued by USCIS relating to the Form I-589 addressed to Yubin Zheng c/o Morris M. Wu. *See* ECF Nos. 8-9. Specifically, the Court ordered the plaintiff to clarify his representation status no later than November 15, 2022, and if he is represented by counsel, for counsel to file a notice of appearance by the same date. *See* ECF No. 9. Finally, the Court extended the government's time to respond to the complaint to December 15, 2022, subject to the resolution of the issues surrounding the plaintiff's representation status and adjourned the initial pretrial conference to December 20, 2022. *See id.* To date, neither the plaintiff nor Mr. Wu has provided the information that the Court ordered the plaintiff to provide by November 15. Given the plaintiff's noncompliance with the Court's order and failure to demonstrate that he wishes to continue pursuing this action, the government respectfully requests that the Court issue an order to show cause why the Court should not dismiss the matter for failure to prosecute or follow a Court order pursuant to Federal Rule of Civil Procedure 41(b). *See, e.g., U.S. ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2d Cir. 2004) (stating standard); *Simmons v. Abruzzo*, 49 F.3d 83, 87 (2d Cir. 1995) (noncompliance with court order may be treated as a failure to prosecute). Other courts in this District have recently issued such orders in cases in which Mr. Wu may be representing the plaintiff. *See, e.g., Li v.*

*USCIS*, 22 Civ. 6556 (VEC) (SN), ECF No. 17 (Nov. 10, 2022); *Shao v. USCIS*, 22 Civ. 6553 (JPO), ECF No. 11 (Oct. 17, 2022).

The government also requests a sixty-day extension of time to respond to the complaint and an adjournment of the initial pretrial conference to allow time for the issue regarding the plaintiff's representation status and failure to comply with the Court's order to be resolved. At the very least, the government needs to know with whom it should confer (*i.e.*, the plaintiff or Mr. Wu) regarding the potential resolution of this case.

I thank the Court for its consideration of this letter.

Respectfully submitted,

DAMIAN WILLIAMS  
United States Attorney

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cc: Yubin Zheng, 137 Chrystie Street, Apt. B, New York, NY 10002 (by U.S. Mail)

Application GRANTED. On September 30, 2022, the Court ordered Plaintiff to clarify whether he is proceeding *pro se* in this matter or whether he is represented by counsel by November 15, 2022. (Dkt. #9). To date, Plaintiff has not responded to the Court's Order. Accordingly, Plaintiff is **ORDERED** to show cause in writing why the Court should not dismiss this case for failure to prosecute or respond to a Court order by **January 27, 2023**. Plaintiff's failure to respond to this Order will likely result in this case being dismissed.

The Court GRANTS the Government an extension of time to respond to the complaint until **February 13, 2023**. The initial pretrial conference scheduled to take place on December 20, 2022, is hereby **ADJOURNED *sine die*** pending Plaintiff's response to the Court's Order to show cause.

The Clerk of Court is directed to mail this endorsement to 137 Chrystie St., Apt. B, New York, New York 10002. The Clerk of Court is further directed to terminate the pending motion at docket entry 11.

Dated: November 22, 2022  
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE